

## § 295.12

## 46 CFR Ch. II (10–1–10 Edition)

(b) *Action by the Applicant.* Applicants for MSP Payments shall submit information on the following (Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable):

(1) *Intermodal network.* A statement describing its operating and transportation assets, including vessels, container stocks, trucks, railcars, terminal facilities, and systems used to link such assets together;

(2) *Diversity of trading patterns.* A list of countries and trade routes serviced along with the types and volumes of cargo carried;

(3) *Vessel construction date;*

(4) *Vessel type and size;* and

(5) *Military Utility.* An assessment of the value of the vessel to DOD sealift requirements.

(Approved by the Office of Management and Budget under Control Number 2133–0525)

[62 FR 37737, July 15, 1997, as amended at 68 FR 62537, Nov. 5, 2003; 69 FR 61451, Oct. 19, 2004]

### § 295.12 Priority for awarding agreements.

Subject to the availability of appropriations, MARAD shall enter into individual MSP Operating Agreements for Eligible Vessels according to the following priorities:

(a) *First priority requirements.* First priority shall be accorded to any Eligible Vessel meeting the following requirements:

(1) *U.S. citizen ownership.* Vessels owned and operated by persons who are Citizens of the United States as defined in § 295.2; or

(2) *Other corporations.* Vessels less than 10 years of age and owned and operated by a corporation that is:

(i) eligible to document a vessel under 46 U.S.C. chapter 121; and

(ii) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under 46 U.S.C. chapter 121, or chartering other vessels to the Secretary of Defense.

(3) *Limitation on number of vessels.* Limitation on the total number of Eligible Vessels awarded under paragraph (a) of this section shall be:

(i) For any U.S. citizen under paragraph (a)(1), the number of vessels may not exceed the sum of:

(A) the number of U.S.-flag documented vessels that the Contractor or a related party operated in the foreign commerce of the United States on May 17, 1995, except mixed coastwise and foreign commerce; and

(B) the number of U.S.-flag documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) For any corporation under paragraph (a)(2) of this section, not more than five Eligible Vessels.

(4) *Related party.* For the purpose of this section a related party with respect to a person shall be treated as the person.

(b) *Second priority requirements.* To the extent that appropriated funds are available after applying the first priority in paragraph (a) of this section, the MARAD shall enter into individual MSP Operating Agreements for Eligible Vessels owned and operated by a person who is:

(1) *U.S. citizen.* A Citizen of the United States, as defined in § 295.2(g), that has not been awarded a MSP Operating Agreement under the priority in paragraph (a) of this section, or

(2) *Other.* A person (individual or entity) eligible to document a vessel under 46 U.S.C. chapter 121, and affiliated with a person or corporation operating or managing other U.S.-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(c) *Third priority.* To the extent that appropriated funds are available after applying the first and second priority, any other Eligible Vessel.

(d) *Number of MSP Operating Agreements Awarded.* If appropriated funds are not sufficient to award agreements to all vessels within a priority set forth herein, MARAD shall award to each eligible applicant in that priority a number of Operating Agreements that bears approximately the same ratio to the total number of Operating Agreements requested under that priority, and for which timely applications have been made, as the amount of appropriations

available for MSP Operating Agreements for Eligible Vessels in the priority bears to the amount of appropriations necessary for MSP Operating Agreements for all Eligible Vessels in the priority.

### Subpart C—Maritime Security Program Operating Agreements

#### § 295.20 General conditions.

(a) *Approval.* MARAD may approve applications to enter into a MSP Operating Agreement and make MSP Payments with respect to vessels that are determined to be necessary to maintain a United States presence in international commercial shipping or those that are deemed, after consultation with the Secretary of Defense, to be militarily useful for meeting the sea-lift needs of the United States in national emergencies.

(b) *Effective date—(1) General Rule.* Unless otherwise provided in the contract, the effective date of a MSP Operating Agreement is the date when executed by the Contractor and MARAD.

(2) *Exceptions.* In the case of an Eligible Vessel to be included in a MSP Operating Agreement that is subject to an ODS contract under subtitle A, title VI, of the act or on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Program Agreement provided by section 653 of the act, unless an earlier date is requested by the applicant, the effective date for a MSP Operating Agreement shall be:

(i) The expiration or termination date of the ODS contract or Government charter covering the vessel, respectively, or

(ii) Any earlier date on which the vessel is withdrawn from that contract or charter.

(c) *Replacement Vessels.* MARAD may approve the replacement of an Eligible Vessel in a MSP Operating Agreement provided the replacement vessel is eligible under § 295.10.

(d) *Notice to shipbuilders.* The Contractor agrees that no later than 30 days after soliciting any offer or bid for the construction of any vessel in a foreign shipyard, and before entering into any contract for construction of a vessel in a foreign shipyard, the Con-

tractor shall provide notice of its intent to enter into such a contract (for vessels being considered for U.S.-flag registry) to MARAD. Within 10 business days after the receipt of such notification, MARAD shall issue a notice in the FEDERAL REGISTER of the Contractor's intent. The Contractor is prohibited from entering into any such contract until 10 business days after the date of publication of such notice.

(e) *Early termination.* A MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies MARAD not later than 60 days before the effective date of the proposed termination, that the Contractor intends to terminate the Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments to the extent and for the period contained in section 652(m) of the Act.

(f) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, insufficient funds have been appropriated under section 655 of the act for that fiscal year, MARAD shall notify the Congress that MSP Operating Agreements for which insufficient funds are available will be terminated on the 60th day of that fiscal year if sufficient funds are not appropriated or otherwise made available by that date. If only partial funding is appropriated by the 60th day of such fiscal year, then MSP Operating Agreements for which funds are not available shall be terminated using the pro rata distribution method used to award MSP Operating Agreements set forth in § 295.12(d). With respect to each terminated agreement the Contractor shall be released from any further obligation under the agreement, and the Contractor may transfer and register the applicable vessel under a foreign registry deemed acceptable by MARAD. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated and each Contractor shall be released from its obligations under the agreement. Final payments under the terminated agreements shall be made in accordance with § 295.30. To the extent that funds are appropriated in a subsequent